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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

入
Dated this the 30th day of June 1998

BEFORE

THE HON'BLE MR.JUSTICE M.F.SALDANHA

WRIT PETITION NO.11600/1998

Between:

1. Sri Somanagouda
S/o Shanmukhagouda Patil,
Age:38 years,
Occ;Agriculture,
R/o Haralapur
Taluk and Dist:Gadag.
 2. Smt.Gowramma
W/o Shanukhagouda Patil,
Age:Major,
R/o Haralapur,
Taluk and Dist:Gadag.
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- ... Petitioners.

(By Sri R.H.Chandangoudar, Advocate).

And:

1. The State of Karnataka
by Revenue Secretary,
M.S.Building,
Bangalore.
2. The Land Tribunal
Gadag by its Chairman

....2/-

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3. The Tahsildar,
Gadag Taluk,
Gadag.

... Respondents.

(By Smt.M.R.Shanthakumari, HCGP).

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash vide Annexure-C dated 9-12-92 passed by respondent.


This Writ Petition coming on for preliminary hearing this day, the Court made the following:-

O R D E R

I have heard the petitioners' learned Advocate and the learned Government Advocate.

An area of 29 acres 18 guntas has been declared as surplus out of an aggregate of 83 acres 18 guntas. This case has been remanded twice and the learned Government Advocate submits that this Court should refuse to show any indulgence to the petitioner because whatever pleas that

.....3/-




have been now taken up viz., that they are entitled to two shares have not been substantiated before the Tribunal. Normally I would have straightaway dismissed this Writ Petition, but there is an equal fault on the part of the Tribunal. When a party takes up a contention the Tribunal is required to examine it and ^{it} _{is} equally the duty of the Tribunal to direct the party to substantiate the plea and if the party fails to do so, the Tribunal can certainly reject it. I find that there has been absolutely no enquiry or application of mind with regard to the aspect as to whether the petitioners are entitled to one or two shares and to this extent the fault lies equally with the Tribunal. I do not dispute that the primary duty was that of the petitioners who, ^{if they} ~~they have~~ desired to retain the excess land, ought to have produced ~~required~~ requisite material, such as the supportive entries etc., to substantiate that the partition has in fact

taken place that it is lawful and that the petitioners are entitled to retain two shares. For not having done this, and having invited a remand for the third time the petitioners will have to pay heavy costs. I propose to make this condition precedent and if the costs are not deposited the order of remand shall not be given effect to.

2. The impugned order is set aside. The petitioners are directed to appear before the Tribunal on 10-8-98 and if the Tribunal is not working on that date, the next convenient date shall be assigned to them. The petitioners will be required to ^{fully} substantiate their pleas before the Tribunal. The Tribunal shall re-examine the case and pass fresh orders according to law. It is quite clear to me, that all these tactics have been adopted only to hold on ^{to} the land for as long a time as possible and in view of this position,

...5/-



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~~2~~ exemplary costs quantified at Rs.5,001/- are awarded against the petitioners. This amount will have to be deposited with the Advocates Welfare Fund, High Court, within a period of four weeks from to-day and the receipt produced before the Tribunal. This is a condition precedent for the remand.

3. In ~~a~~ case after case this Court is presented with a contention that the Tribunal has passed a particular order and that ~~up to~~ *for as long as* even ~~for~~ 15 to 20 years the petitioners did not know of the existence of that order. The Tribunal hereinafter shall therefore ensure that where the parties are represented by Advocates that the learned Advocate is directed to ~~receive~~ *collect* a copy of the order and acknowledge the receipt thereof and in those of the cases where they are not represented by ~~the~~ Advocates the Tribunal shall ensure that a copy of the order is served on each of the parties to the proceeding and that

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the acknowledgements are preserved in the record. It is necessary to follow this procedure as otherwise the contentions are raised that the party was unaware of the existence of the order and Writ Petitions are presented to this Court even 15^{to}/₂₀ years after the date when the order is passed. There is no means whereby this Court is able to verify the truth of this statement and hence the benefit of doubt is invariably ~~be~~ given to the petitioners, but this unsatisfactory state of affairs will have to stop.

5. The Writ Petition accordingly succeeded~~ed~~ with costs as quantified. I have heard the learned Government Advocate on merits.

The Registrar-General shall send a copy of this order to the Secretary to Government, Revenue Department, who in turn shall communicate these directions to all the Tribunals in the State.



Sd/-
JUDGE